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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Carrie Ferrara Clark,)
)
Plaintiff,)
) CV-14-2543-TUC-CKJ
vs.)
) Tucson, Arizona
City of Tucson,) April 4, 2019
) 4:30 p.m.
Defendant.)
)

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXCERPT JURY TRIAL DAY FOUR - TESTIMONY OF EDWARD NIED

BEFORE: THE HONORABLE CINDY K. JORGENSON
UNITED STATES SENIOR DISTRICT JUDGE

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Proceedings Reported by Stenographic Court Reporter
Transcript Prepared by Computer-Aided Transcription

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WITNESSES CALLED ON BEHALF OF THE DEFENSE

EDWARD NIED

DIRECT BY MS. SAAVEDRA	3
CROSS BY MR. JACOBSON	19
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1 P R O C E E D I N G S

2 (Reporter's note: Beginning of requested proceedings
3 commenced at 4:30 p.m., as follows:)

4 THE COURT: All right. The plaintiff having rested,
5 the defendant may call its first witness.

6 MS. SAAVEDRA: Thank you, your Honor. We're going
7 to call Chief Ed Nied. Former Chief Ed Nied.

8 THE COURT: Sir, you can come on in. Walk up here
9 to the witness stand. And you can remain standing and the
10 clerk will swear you in as a witness.

11 EDWARD NIED, GOVERNMENT WITNESS, SWORN

12 THE CLERK: You may be seated. Would you state your
13 full name for the record and spell your last name?

14 THE WITNESS: Edward Lewis Nied, Jr., N-i-e-d.

15 THE COURT: All right. And Ms. Saavedra, you may
16 proceed.

17 MS. SAAVEDRA: Thank you, your Honor.

18 DIRECT EXAMINATION

19 BY MS. SAAVEDRA:

20 Q. Good afternoon. Can I just refer to you as Chief Nied
21 because --

22 A. You can just call me Ed.

23 Q. I know you're retired, but is that okay?

24 A. Cause just call your Ed.

25 Q. Okay. I'll call you Ed.

1 Can you please tell the jury how long you work for the
2 fire department and what is your last position?

3 A. I worked for the fire department for about 24 years,
4 11 months; just about 25 years. And my last position was
5 deputy chief in fire prevention.

6 Q. And before that what was your position?

7 A. Deputy Chief of Operations.

8 Q. Can you tell us, as the Deputy Chief of Operations what
9 were your responsibilities?

10 A. Basically, assisting the battalion chiefs in doing their
11 work so that they could assist their folks and on down the
12 line.

13 Q. And in 2012 that was the position that you held?

14 A. Yes, I believe so.

15 Q. And if you recall, was it Chief Robert Rodriguez and you
16 were the other chief?

17 A. Yes, ma'am.

18 Q. At the time?

19 A. Yes, ma'am. Yes, ma'am.

20 Q. And what area of Tucson were you in charge of?

21 A. Basically, we split the city in half so that I had more
22 of the east side and he had more of the west side.

23 Q. And was Battalion Chief Brian Stevens, did he report to
24 you?

25 A. Yes, ma'am.

1 Q. And did also Captain Trish Tracy report to you?

2 A. No.

3 Q. Well, she reported to Stevens and then Stevens reported
4 to you?

5 A. Yes, ma'am.

6 Q. Okay. So I'm just going to jump right into it.

7 Do you remember in about October of 2012 when Battalion
8 Chief Brian Stevens sent a recommendation to you in regards to
9 some movement at Station 12 due to personnel issues?

10 A. I remember it, pieces of it, yes.

11 Q. Okay. And I can refresh your memory with documents that
12 we have as we move along. So if there's something that's
13 going to refresh your memory, I'll show it to you, okay?

14 Now, at the time do you remember how Battalion Chief
15 Stevens was handling the situation with Paramedic Jeff Todd?

16 A. I don't remember the particulars, no.

17 Q. Okay. I'm going to go ahead and show you an e-mail that
18 was sent to you by Battalion Chief Brian Stevens to see if
19 that might refresh your memory a little bit. So let me grab
20 that real quick.

21 MS. SAAVEDRA: May I approach, your Honor?

22 THE COURT: Yes.

23 BY MS. SAAVEDRA:

24 Q. And before I approach, I'm showing you what's been marked
25 as the City's Exhibit 303 ending in Bates stamp 396 through

1 399.

2 So this was an e-mail that Battalion Chief Stevens sent
3 to you?

4 A. Okay.

5 Q. Is that what it appears to be in front of you?

6 A. Yes.

7 Q. Okay. I'm sorry, it's Exhibit 333.

8 So in looking at that. Do you remember that Battalion
9 Chief Stevens had sent you some recommendations in regards to
10 some movement that he thought should take place at Station 12
11 or from Station 12?

12 A. Yes. I remember the portion about bringing
13 Paramedic Todd over to Station 9.

14 Q. Okay. And in the document that was attached to that
15 e-mail, is that the document that you see there on the
16 follow-up pages? Does that appear to be the recommendations
17 that Battalion Chief Stevens e-mailed to you?

18 A. Yeah. It appears in this paragraph right here that
19 that's what he's suggesting.

20 Q. And if you look at those recommendations, I know it's
21 been a long time, if you look through the recommendations, do
22 you agree that Battalion Chief Stevens had a couple of
23 recommendations. One was to move Captain Trish Tracy, the
24 other one was to move Jeff Todd. I believe it's on the
25 second page that have document that you'll see.

1 A. I do not remember anything about moving Captain Tracy,
2 but I do remember moving Paramedic Todd.

3 Q. And I'm sorry, my question wasn't clear. Not that she
4 was actually moved, but Battalion Chief Stevens had a couple
5 of recommendations. If you look at page ending in 399
6 actually. 398, 399. Stevens was recommending moving either
7 one or the other? Not that Captain Tracy was actually moved,
8 but he presented a couple of different options.

9 A. I can see that.

10 Q. And ultimately it was Jeff Todd that was moved out?

11 A. Yes, I believe that's correct.

12 Q. Were you privy to any of the conversations that Battalion
13 Chief Stevens had with Jeff Todd?

14 A. No.

15 Q. Were you ever there?

16 A. No.

17 Q. Okay. But he did send you a synopsis of those
18 conversations along with his recommendations?

19 A. Correct.

20 Q. At the time you believed that Stevens was handling the
21 situation and you really didn't get involved; is that fair to
22 say?

23 A. That's what we try to do, yes; let the battalion chiefs
24 handle their districts.

25 Q. And that's what you let Chief Stevens do?

1 A. Yes.

2 Q. But you do know that Todd was eventually moved out, and
3 the evidence -- he was first moved to swing and he bid to
4 Station 9. Does that seem accurate with your memory?

5 A. If that's what's in here. I don't remember that exact
6 sequence, but --

7 Q. Okay. So do you recall when Jeff Todd was moved out of
8 Station 12 that that left that spot open and it was put out to
9 bid?

10 A. Yes.

11 Q. And at that time did you have any involvement with the
12 plaintiff, Carrie Clark?

13 A. No.

14 Q. When all of this was going on with Jeff Todd and the
15 Station 12 opening, you weren't in contact with Carrie at that
16 time?

17 A. Not to my remembrance, no.

18 Q. Okay. So the fact that Jeff Todd's position at 12 when
19 he was moved was put out to bid, is there anything unusual
20 about that or was that consistent with how TFD would deal with
21 an open spot when someone is reassigned somewhere?

22 A. It's a part of our rules of assignment, the Bid Tool.

23 Q. And just explain, how does that Bid Tool work?

24 A. Basically, when certain conditions are met, the person
25 who is leaving the station, their spot is put out to what's

1 called bid and it appears on a Bid Tool that is created within
2 the fire department. There are rules and regulations that
3 both labor and management have agreed upon that we attempt to
4 follow as much -- as closely as possible for consistency's
5 sake and for being able to take care of everyone's needs. And
6 then the senior-most bidder who has the qualifications for
7 that spot wins the bid.

8 Q. Do you remember what were the dates that that bid was won
9 or who won it?

10 A. I remember Paramedic Scott Billings won that bid.

11 Q. Okay. And do you remember the date that he won that bid?

12 A. No, sorry, I do not.

13 Q. That's okay. I'm going to show you what's been marked as
14 City's Exhibit 330 ending in Bates stamp 2937, and I'll just
15 show it to him on here. Just him, not the jury, please. And
16 the document that I'm showing you, this is a daily bulletin
17 that the Tucson Fire Department puts out?

18 A. Correct.

19 Q. And on this document, I'm showing you a portion of it,
20 can you determine by looking at this document when Paramedic
21 Scott Billings won the bid for Station 12?

22 A. It says November 10th of 2012.

23 Q. And when he won the bid to 12, what happened to the
24 position that he was in?

25 A. It goes out to bid.

1 Q. And if you look at the document in front of you now, the
2 same document, I've just moved it down so you can see the
3 other portion of it, does it tell you what happened -- what
4 position Billings was in and what happened to that?

5 A. He was at Paramedic 16. And due to him winning the bid,
6 Paramedic 12C, his position went out to bid.

7 Q. Okay. So we knew that November 10th, 2012, Scott
8 Billings won that bid. Do you remember receiving a phone call
9 from Scott Billings after he had won this bid?

10 A. Yes.

11 Q. What do you recall about that phone call that you
12 received?

13 A. I recall that he was concerned whether he was going to be
14 able to keep the bid or not.

15 Q. And what did he express to you the reason he had this
16 concern?

17 A. He had a conversation that -- I believe it was with
18 Gordon Clark with regard to backing out of his bid so that
19 Carrie Clark could stay there.

20 Q. And when Scott Billings -- Paramedic Scott Billings
21 contacted you about this, how did you respond to it?

22 A. Basically, I told him that it was his bid to keep. That
23 there was nothing to my knowledge -- I wasn't involved in
24 anything that would lead me to believe anything otherwise.

25 Q. And the fact that Gordon had contacted Scott Billings,

1 what did you feel about that?

2 A. Well, I felt like it was probably not the right thing to
3 do for a couple of reasons. No. 1, he's married to Carrie.
4 And No. 2, it was a captain to a paramedic which is a lower
5 role, so that could potentially put Gordon in a tough spot as
6 well as Paramedic Billings.

7 Q. Do you remember Billings telling you about a comment that
8 Gordon made to him about that he had talked to Paul McDonough
9 and so we would see kind of what would happen? That was the
10 gist of it?

11 A. That was the gist of it.

12 Q. So you do remember Billings communicating that to you?

13 A. I remember it from the memo.

14 Q. The memo that you wrote about the incident?

15 A. Yes.

16 Q. Okay. And when Billings told you that Gordon had gotten
17 involved and that he made this comment that Paul McDonough was
18 going to take care of basically, what was the first thing that
19 you thought?

20 A. I wasn't sure what was going on, to be honest with you,
21 because Chief McDonough was not part of the chain of command
22 in that area. So I wasn't quite sure what was happening.

23 Q. And the decision to place employees at different stations
24 or assignments, whose decision that?

25 A. It's basically the employee's decision by putting their

1 name in for the bid.

2 Q. Gotcha. And then when someone is moved when it's not put
3 out for bid, -- we've all heard about the Tucson Fire
4 Department management rights. You're familiar with that?

5 A. Yes.

6 Q. So there are occasions where the fire department will
7 move people even though they didn't bid for the position?

8 A. Correct.

9 Q. So that would be another way that someone would end up in
10 a different --

11 A. Yes.

12 Q. -- assignment?

13 A. Yes.

14 Q. Okay. And in this case with Jeff Todd, he didn't bid to
15 get out of Station 12; correct? He was moved out originally
16 and then bid for 9?

17 A. That's my recollection, yes.

18 Q. Okay. So did you also receive -- and the phone call that
19 you received, this was early November 2012. Does that seem
20 about right?

21 A. Yes.

22 Q. Shortly after the bid was won.

23 Do you recall also getting a phone call from Captain Max
24 Parks?

25 A. Yes.

1 Q. Who was Captain Max Parks?

2 A. Captain Max Parks was the captain on Engine 16 "C" Shift
3 at the time. I believe he was on the engine.

4 Q. And that was Scott Billings' captain before he moved over
5 to 12?

6 A. Yes.

7 Q. And what do you recall about the conversation that you
8 and Max Parks had?

9 MR. JACOBSON: Judge, I'm going to object and ask
10 for a sidebar because I think I know where this is going.

11 THE COURT: Yes.

12 (At sidebar.)

13 MR. JACOBSON: So this memorandum alleges that Max
14 Parks told him that he didn't want to work with Carrie and
15 that he was on -- on his way to terminating Carrie during her
16 probationary period. This is going to up a whole can of
17 worms. I'm going have to call Max Parks in.

18 THE COURT: He's not a witness right now.

19 MR. JACOBSON: He's not a witness. And it is
20 hearsay, it is not relevant to the issues in this case, and
21 they're just trying to do it to dirty up Carrie.

22 MS. SAAVEDRA: That's not true, your Honor. What I
23 would like to get out of this witness, and I can lead if
24 that's what you would like me to do.

25 MR. JACOBSON: Absolutely.

1 MS. SAAVEDRA: I haven't been doing that because I'm
2 doing direct, but I can lead him where I want him to go.
3 Which all I want to ask him is that there was a conflict
4 between Max Parks and her. And so originally he had thought
5 that 16 might be a good place to put Carrie, but because there
6 was this conflict, he knew he would not recommend to put
7 Carrie at 16.

8 MR. JACOBSON: As long as we establish it was a
9 mutual conflict, I'm fine.

10 MS. SAAVEDRA: That's fine. I wasn't going to bring
11 in the almost failing probation.

12 MR. JACOBSON: Cool. Thank you.

13 THE COURT: Okay.

14 MR. JACOBSON: Thank you.

15 MS. SAAVEDRA: Thank you.

16 (Open court.)

17 THE COURT: And Ms. Saavedra, you may proceed.

18 MS. SAAVEDRA: Thank you, your Honor.

19 BY MS. SAAVEDRA:

20 Q. So Max Parks was the captain at 16?

21 A. Yes.

22 Q. And during your conversation with Max Parks, you
23 discovered that there was a mutual conflict between Captain
24 Max Parks and Paramedic Carrie Clark; is that correct?

25 A. Yes.

1 Q. And the reason I'm asking you that is because at some
2 point you thought that maybe putting -- you didn't know what
3 Carrie's needs were at the time; is that correct?

4 A. That's correct.

5 Q. But you thought perhaps 16 might be somewhere that she
6 could go since that was opening up with Scott Billings going
7 to 12?

8 A. That's correct.

9 Q. And when you discovered that there was this mutual
10 conflict, you decided that 16 wouldn't be a good place to put
11 Carrie; is that correct?

12 A. That's correct.

13 Q. And that's because you didn't want to cause her any
14 additional stress?

15 A. That's correct. If I can help it.

16 Q. So you then contacted Gordon Clark; is that correct?

17 A. Yes.

18 Q. And do you remember the conversation you had with Gordon?

19 A. No, I don't.

20 Q. If I were to show you the memo that you prepared, would
21 that refresh your memory?

22 A. I remember from the memo that it basically revolved
23 around -- I don't remember all the specifics, but it basically
24 revolved around the fact that he -- about what he did and
25 that's not something that -- I didn't think that was something

1 he should have done, and that he doesn't control where Carrie
2 can be and cannot be assigned.

3 Q. Okay. So you told him that he doesn't get to control
4 where his wife is assigned?

5 A. That's correct.

6 Q. Do you recall also telling him that Carrie needed to
7 submit a memo with her request up her chain of command?

8 A. That's correct.

9 Q. And then, do you recall that Carrie did submit a memo up
10 her chain of command requesting to go to Station 12?

11 A. I do from the memo, but I don't remember the memo itself.

12 Q. Okay. You don't remember Carrie's memo?

13 A. No.

14 Q. You but remember she did submit one?

15 A. Yes.

16 Q. Do you remember as a result of Carrie submitting that
17 memo, that you, Chief Rodriguez, and Paul McDonough and Carrie
18 all met in early November 2012?

19 A. That's correct. We did.

20 Q. What do you recall about that meeting that the four of
21 you had?

22 A. Basically, it was to go over the memo and find out her
23 concerns and needs and try to help her in any way we could to
24 get an assignment or help her with her situation.

25 Q. During that meeting, did you say anything inappropriate

1 to Carrie Clark?

2 A. No, ma'am.

3 Q. Did you hear Rob Rodriguez say anything inappropriate to
4 Carrie Clark?

5 A. No, ma'am.

6 Q. Did you start the meeting off with, Okay, Carrie, what's
7 going on here?

8 A. I don't remember saying anything like that, no.

9 Q. What do you recall about the demeanor of everyone during
10 that meeting?

11 A. I recall even Chief Rodriguez pulling his chair over
12 closer and just, you know, when Carrie was upset; I believe I
13 remember that. And him even putting his head down near where
14 she was and saying, Look, we're here to help you. We're here
15 to try to make this work. We're here to try to assist you in
16 any way we can. That's what I -- that's one thing that comes
17 to my mind.

18 Q. And do you remember there being some discussion about
19 where Carrie could be placed, like reoffering her the
20 Station 20 placement?

21 A. I believe there were three other -- there were two
22 options. Paul McDonough had said something about making 20
23 available in some way. I'm not sure how that would have
24 worked. And then I believe Station 6 came up in the
25 conversation, but I'm not -- I'm not positive about that. But

1 I remember 6 and 20 were two options.

2 Q. Okay. Do you remember as a result of that meeting you
3 contacting Billings and talking to him about postponing his
4 time?

5 A. Yes.

6 Q. Or his movement to 12?

7 A. Yes.

8 Q. Tell the jury what you recall about that conversation
9 with Billings.

10 A. Basically, Scott had been trying to get to that station
11 for a long time to work with a close comrade of his, and he
12 was really looking forward to going there. So basically I
13 said, Look, we're trying to help Carrie out. We're trying to
14 buy some time here to see what other things may pop open, see
15 what other bids may come open, see what other avenues she may
16 be able to find to help her with her situation. And I asked
17 him if he would delay his bid until through the holidays I
18 believe it was, and he agreed to do that.

19 Q. Now, when you asked Paramedic Billings to do this, you
20 didn't have to ask him to do that; is that fair?

21 A. No.

22 Q. And when he responded that he would do it, did he give
23 you any sort of pushback?

24 A. No. He wanted to be part of the solution, too, I think
25 in his way if he could, and that was the one thing he could

1 do. I don't think he -- I don't think he liked it. I think
2 he wanted to get to 12. But he was good about it and gave us
3 the time.

4 Q. And did you feel by making this adjustment for Carrie
5 that you were trying to help her out?

6 A. Absolutely. It's the only reason we did.

7 Q. And ultimately, he waited to take his position at 12 so
8 that Carrie could be there until the end of the year?

9 A. That's correct.

10 MS. SAAVEDRA: I don't have anything further. Thank
11 you.

12 THE COURT: Cross-examination.

13 CROSS-EXAMINATION

14 BY MR. JACOBSON:

15 Q. So Mr. Nied, at the moment you have the conversation with
16 Scott Billings, what was your understanding of the issue that
17 Carrie was having that was brought forward by this Station 12
18 bids, phone calls, all that stuff?

19 A. The only thing I remember about the issue itself, I'm not
20 exactly sure of the time line that you're talking about, is
21 that it had something to do with extracting breast milk for
22 her newborn and --

23 Q. What about extracting breast milk for her newborn?

24 A. Just --

25 Q. The need to have a space to do so; right?

1 A. I don't remember because we have the space, and -- what I
2 remember is we had space available for that. Other women had
3 done that in the past. But --

4 Q. Where was that space?

5 A. Usually in the study. In the safe room. After 911 we
6 put locks on the study, on the study where the books and
7 computers are that people go in to study for promotional exams
8 and so forth and so on. And I remember that it was that. It
9 was also an issue with her mother picking up the milk for
10 delivery. Those are the only two things.

11 Q. So you didn't really explore what the issue was that
12 Carrie was having; right?

13 A. I'm sorry?

14 Q. So at this point you already know at the point that you
15 have this conversation with Scott Billings -- first, let's
16 talk. When did that occur? When did that conversation with
17 Scott Billings that you had, when he called you, when did that
18 occur?

19 A. I don't know the exact date but after he won the bid.

20 Q. So when did he won the bid?

21 A. He would be the bid November 10th.

22 Q. So after November 10th, by that time you had already
23 heard that Gordon Clark had spoken to Battalion Chief Paul
24 McDonough; and that Gordon had spoken to Scott Billings, and
25 it was so inappropriate that you called Gordon Clark, right,

1 to discuss it with him?

2 A. Yes.

3 Q. Right?

4 And so there was such an issue, there was a lot of stuff
5 going on that you took absolutely no action to find out what
6 the core issue was, did you?

7 A. As I recall --

8 Q. Yes-or-no question. Did you take any action to find out
9 what the core issue was that was causing all this?

10 A. Yes.

11 Q. And you found out that it was what?

12 A. As I stated.

13 Q. So you -- you believed it was just an issue with her
14 expressing her breast milk. What was the issue?

15 A. It was the space.

16 Q. It was the space; right?

17 A. That you brought up.

18 Q. So at the point that you have that conversation with
19 Scott Billings, you knew that Carrie was having an issue with
20 having a proper space to express her breast milk; right? Yes?

21 A. Yes.

22 Q. Okay. So Scott really -- and you know -- you knew or at
23 least you believed at that moment that Carrie really wanted to
24 go to Station 12; right? Is that a fair statement? That
25 Carrie wanted to be at Station 12; is that a fair statement?

1 A. Yes.

2 Q. And you believed that Carrie's desire to be at Station 12
3 was based on her pregnancy needs; right? Because she was
4 expressing her breast milk and that's part of pregnancy;
5 right?

6 A. I can't say whether that was it or not.

7 Q. So you said that 12 was part of the conversation because
8 that was closer to home for her mom to pick up her breast
9 milk; right?

10 A. That part I remember, yes.

11 Q. And so at least part of her reason had to do with her
12 pregnancy; right? Expressing breast milk, pumping breast
13 milk.

14 A. Yes.

15 Q. So at that moment when you're talking to Scott Billings
16 and you know that Carrie really wanted to be at 12 for a
17 pregnancy-related issue, you chose to allow Scott Billings to
18 have that bid so he could be with his buddy who was trying to
19 get to for a long time?

20 A. I didn't choose it. The rules of assignment chose it.

21 Q. But you had the power and authority under management
22 rights to override that bid, didn't you? As deputy chief of
23 operations, you had the power and authority to override that
24 bid; right?

25 A. Not according to the rules of assignment.

1 Q. Under management rights --

2 A. Management rights, yes.

3 Q. So under TFD policy, under the negotiated agreement with
4 the union, you had the power and authority to override Scott
5 Billings' bid. But you chose to allow him to go there so he
6 could be with a buddy over Carrie's pregnancy needs; right?

7 A. No, I chose to ask him to stay at 16 for a period of time
8 so we could help Carrie out as well.

9 Q. But you had the power and authority to assign that bid or
10 assign that spot to Carrie and you didn't do it. Instead you
11 said, no, Scott, you won that bid. You've been trying to get
12 there for a long time so you can go be with your buddy.

13 Right? Yes?

14 A. I wouldn't put it that way, but yes.

15 Q. You testified on direct that battalion chiefs manage
16 their district; right?

17 A. Correct.

18 Q. You and I never met before right outside the door here
19 today; right?

20 A. Correct.

21 Q. And you and I never talked before today; correct?

22 Correct?

23 A. Correct.

24 Q. But you did talk to the lawyers for the City of Tucson
25 before your testimony today; right?

1 A. Correct.

2 Q. How often in the last two weeks?

3 A. None.

4 Q. How about in the last month?

5 A. Once.

6 Q. And when Brian Stevens brought forward his recommendation
7 to you regarding Station 12, do we agree that Chief Stevens
8 had done a fairly thorough review of the situation there at
9 Station 12?

10 A. Yes.

11 Q. And he wrote a fairly thorough memo to you; right?

12 A. Yes.

13 Q. And would you agree that part of Battalion Chief Stevens'
14 findings were that Captain Tracy was uncomfortable and anxious
15 on calls as reported to him by other people at that station?

16 A. I don't remember that.

17 Q. If you would refer back to your -- that memo. Sorry.
18 It's the -- here, why don't I do this: Showing you -- has 54
19 been admitted? I'm showing you I think it was Exhibit 330
20 which is the defense exhibit. Do you see that there?

21 A. No.

22 Q. The e-mail from Brian Stevens to you along with the
23 report. Do you see that in front of you?

24 A. I see an e-mail here from Brian Stevens to myself.

25 Q. And do you see the report that was attached to it?

1 A. This.

2 Q. Okay. Yes. That exhibit in front of you, if you would
3 turn to the page marked on bottom right COT 398. Do you see
4 that?

5 A. Yes.

6 Q. So I'm going to put this on the ELMO and zoom in a little
7 bit. Do you see there in the highlighted portion where Brian
8 Stevens wrote to you that Captain Tracy was uncomfortable and
9 anxious on calls?

10 A. Yes.

11 Q. And do you see there where it cites a stroke call, in
12 fact, where they felt no support and -- there were just some
13 issues there at Station 12; right? Yes?

14 A. Yes.

15 Q. Okay. And so the issues at Station 12 were not isolated
16 to Jeff Todd; right?

17 A. No.

18 Q. According to this memo?

19 A. No.

20 MR. JACOBSON: May I have a moment, Judge.

21 THE COURT: Yes.

22 MR. JACOBSON: I have nothing further Judge.

23 THE COURT: All right. Redirect.

24 MS. SAAVEDRA: Thank you, your Honor.

25 ///

1 REDIRECT EXAMINATION

2 BY MS. SAAVEDRA:

3 Q. Chief Nied, Mr. Jacobson kept pushing you as to whether
4 or not you had looked in further to Carrie's issues, and I
5 think you were trying to explain something to the jury when
6 you weren't allowed to do so. What was it you were trying to
7 explain when he asked you about that?

8 A. If I recall, it was that I was -- I don't believe that
9 everything was being said. Carrie, this is a very personal
10 issue understandably so, and I don't know that I was privy to
11 all of the information that was a concern.

12 Q. And would it be fair to say that you weren't grilling her
13 during this meeting to figure out what her situation was or
14 what her issues were?

15 A. "Grilling her"?

16 Q. Grilling her. Asking her various questions --

17 A. No.

18 Q. -- about what her needs were or what her issues were?

19 A. We were asking appropriate questions to try to find out
20 how best we could help.

21 Q. And ultimately, I mean, what was it you were all trying
22 to do at that meeting?

23 A. Trying to find solutions. We had numerous people
24 involved in this. It was not just Carrie Clark. It was, you
25 know, Scott Billings, Max Parks, Brian Stevens, Trish Tracy.

1 We had the other medics there. There were a multitude of
2 things going on. And trying to find common ground and trying
3 to find the best solution so that everyone's needs are taken
4 care of is always the goal, of course. Sometimes that can
5 happen and sometimes that can't.

6 Q. And I think you mentioned that under the rules of
7 assignment it wouldn't be proper for you to pull that bid; is
8 that correct?

9 A. Correct.

10 Q. But then management rights were brought up. Can you
11 explain to us the difference between rules of assignment and
12 how management rights come into play?

13 A. Management rights come into play usually for egregious
14 issues. We try to stick very closely to the rules of
15 assignment because those were the agreed-upon rules, so we try
16 to follow that the best we could. We try to help everybody
17 within those parameters for consistency's sake and because
18 it's what the body -- it's what the labor body wanted. The
19 rules were created just for that purpose, so that we would
20 have mutually agreed-upon set of standards by which things
21 were put out to bid and bids were honored.

22 Q. And I know it was emphasized that Billings got to go to a
23 station where his buddy was, but he had to bid for that
24 station; is that correct?

25 A. Correct.

1 Q. And in order to win that bid, he had to have a certain
2 seniority over anyone else that would want to go to that spot;
3 is that correct?

4 A. Correct.

5 Q. And if anyone that was senior to him had bid for it, that
6 person would have one the bid?

7 A. Yes, had they had the proper qualifications being a
8 paramedic.

9 MS. SAAVEDRA: I do want to move to admit the
10 exhibit that we've referred to, your Honor. First of all, the
11 City's Exhibit 333 ending in 396 to 399 which is the exhibit
12 of the e-mail and recommendations that Battalion Chief Stevens
13 e-mailed to Chief Nied which he has up there with him.

14 MR. JACOBSON: No objection.

15 THE COURT: 333 is admitted.

16 (Exhibit 333 Bates 396-399 entered into evidence.)

17 MS. SAAVEDRA: And I would also like to admit, and I
18 can show it to the witness first, your Honor, Exhibit 333
19 ending in 403 to 404 which is -- I can ask the witness what it
20 is if you'd like or I can just state so for the record?

21 THE COURT: Mr. Jacobson?

22 MR. JACOBSON: Is counsel referring to the May 20th,
23 2013, memorandum from Deputy Chief Nied to Chief Critchley?

24 MS. SAAVEDRA: Yes.

25 MR. JACOBSON: No, I do not agree.

1 THE COURT: Oh. All right. If you want to lay
2 foundation.

3 MR. JACOBSON: It's not an issue of foundation,
4 Judge.

5 THE COURT: Oh, well, then me see it. Come up to
6 sidebar.

7 (At sidebar.)

8 MR. JACOBSON: I'm going to assume that Ms. Saavedra
9 didn't realize this, but the memo says Captain Parks stated he
10 had been working down the road of termination due to
11 performance.

12 MS. SAAVEDRA: Well, can we move to admit it subject
13 to redaction?

14 MS. WATERS: Is that your only issue?

15 MR. JACOBSON: That's it.

16 MS. WATERS: So if we redact --

17 MR. JACOBSON: Yeah, that's fine.

18 THE COURT: Okay. Let's do it.

19 (Open court.)

20 THE COURT: So the exhibit -- what number is it,
21 Ms. Saavedra?

22 MS. SAAVEDRA: Maybe we should rename it 333-A since
23 the other one is 333.

24 THE COURT: Okay. We don't want to do that too
25 often, right, Sandy?

1 THE CLERK: Right.

2 THE COURT: 333-A will be admitted. Certain
3 portions of this memo are not relevant, members of the jury,
4 and are going to be redacted based on the stipulation of
5 counsel. So 333-A which is the redacted version will be
6 admitted into evidence.

7 (Exhibit 333-A entered into evidence.)

8 MS. SAAVEDRA: Thank you, your Honor.

9 And lastly I want to move to admit 330 ending in
10 2937.

11 THE COURT: 330, Mr. Jacobson?

12 MR. JACOBSON: No objection.

13 THE COURT: 330 is admitted and may be published.

14 (Exhibit 330 entered into evidence.)

15 MS. SAAVEDRA: I have nothing further, your Honor.

16 THE COURT: Any questions --

17 MR. JACOBSON: I do have two questions on recross.

18 THE COURT: All right.

19 MR. JACOBSON: Just based on those.

20 THE COURT: Go ahead. And then I'll ask if there
21 are any questions from the jury.

22 RECROSS-EXAMINATION

23 BY MR. JACOBSON:

24 Q. Your meeting, that phone call in November, you were
25 trying to find a solution for Carrie because no solution

1 existed in the fire department under its own rules; correct?

2 Don't look at them.

3 A. Not the solution that she wished.

4 Q. And you're telling us that Carrie's pregnancy needs were
5 not egregious enough to invoke management rights; is that what
6 you're saying?

7 A. I wouldn't put it that way, no.

8 MR. JACOBSON: Nothing further.

9 THE COURT: All right. Any questions from the jury
10 for this witness?

11 All right. Sandy, if you can retrieve the
12 questions.

13 (At sidebar.)

14 MR. JACOBSON: I'm okay with 12. I'm not okay with
15 13. I don't understand it.

16 MS. WATERS: Oh, I think I understand it now.
17 Because someone testified yesterday -- I think she testified
18 yesterday that: We don't get it, why do you need this?
19 Nobody else has had this problem. I think the question is did
20 you question her request, like question her actual need for
21 some accommodation.

22 MR. JACOBSON: Oh, okay. How about did you believe
23 Carrie actually -- yeah.

24 MS. WATERS: Did you doubt.

25 MR. JACOBSON: Did you doubt.

1 MS. WATERS: Did you cast doubt.

2 THE COURT: That she needed accommodation.

3 MR. JACOBSON: That's fine.

4 (Open court.)

5 THE COURT: All right. Sir, a couple of questions
6 from the jury.

7 When there is a change in management such as
8 captains, do the new and old captains meet and discuss
9 department personnel's performance, their concerns, and
10 et cetera.

11 THE WITNESS: That is supposed to happen, yes.

12 THE COURT: And did you question Carrie's need for
13 special accommodation? In other words, did you challenge that
14 or think that --

15 THE WITNESS: No.

16 THE COURT: Okay. All right. Any follow-up
17 questions?

18 MR. JACOBSON: No, Judge.

19 MS. SAAVEDRA: No, your Honor.

20 THE COURT: All right. Any additional questions
21 from the jury?

22 (No response.)

23 THE COURT: All right. Thank you, sir. You may
24 step down and be excused.

25 Let me tell you what I'm telling all witnesses about

1 the rule relating to witnesses.

2 You're not to talk about the case or your testimony
3 with any of the other witnesses or with anyone else until the
4 case is concluded. Once the case is over, you're free to talk
5 or not talk about the case. And unless the lawyers need you
6 to testify again, you're excused at this time.

7 Thank you.

8 THE WITNESS: Thank you.

9 THE COURT: You may talk to the lawyers at any time
10 about the case.

11 And members of the jury, let's go ahead and take our
12 evening recess. Please continue to follow the Court's
13 admonition, and we'll see you tomorrow at 9:30. 9:30. So
14 have a good evening.

15 (Jury panel excused at 5:14 p.m.)

16 THE COURT: So we will recess then until 9:30
17 tomorrow.

18 (Proceedings concluded at 5:14 p.m.)

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C E R T I F I C A T E

I, Cheryl L. Cummings, certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

Dated this 5th day of April, 2019.

/s/Cheryl L. Cummings

Cheryl L. Cummings, RDR-CRR-RMR-CRC-CRI
Federal Official Court Reporter